

## **IC 4-30-8**

### **Chapter 8. Vendors; Disclosure and Contract Requirements**

#### **IC 4-30-8-1**

##### **Contracts for purchase, lease, or lease-purchase of goods or services; restrictions; considerations**

Sec. 1. (a) The commission may enter into contracts for the purchase, lease, or lease-purchase of goods or services necessary to carry out this article. The commission may not contract with any person or entity for the total operation and administration of the lottery established by this article, but may enter into contracts and make purchases that integrate functions such as lottery game design, supply of goods and services, and advertisement.

(b) In all procurement decisions, the director, or the commission, if the commission chooses to make the decision, shall take into account the particularly sensitive nature of the lottery and shall consider the competence, quality of product, experience, and timely performance of the vendors in order to promote and ensure security, honesty, fairness, and integrity in the operation and administration of the lottery and the objective of raising net revenues for the benefit of the public purposes described in this article.

*As added by P.L.341-1989(ss), SEC.1.*

#### **IC 4-30-8-2**

##### **Investigation of persons who submit bids, proposals, or offers; disclosure of information**

Sec. 2. The division of security shall investigate the financial responsibility, security, and integrity of a person who submits a bid, proposal, or offer as part of a major procurement. At a minimum, each person must disclose at the time of submitting a bid, proposal, or offer to the commission all of the following items:

(1) A disclosure of the vendor's name and address and the names and addresses of the following:

(A) If the vendor is a corporation, the officers, directors, and each stockholder in the corporation, except that in the case of owners of equity securities of a publicly traded corporation only the names and addresses of those known to the corporation to own beneficially at least five percent (5%) in equity securities need be disclosed.

(B) If the vendor is a trust, the trustees and all persons entitled to receive income or benefits from the trust.

(C) If the vendor is an association, the members, officers, and directors.

(D) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.

(2) A disclosure of all the states and jurisdictions in which the vendor does business and the nature of that business for each state or jurisdiction.

(3) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services,

including lottery goods and services, and of the nature of the goods and services involved for each state or jurisdiction.

(4) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked or terminated a gaming license or contract of any kind and of the disposition in each state or jurisdiction. If a gaming license or contract has been revoked or terminated or has not been renewed or a gaming license application or contract bid has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying this failure to receive a license or contract must be disclosed.

(5) A tax clearance statement from the department of state revenue certifying that the vendor is not on the most recent tax warrant list.

(6) A disclosure of the details of a conviction or judgment of a state or federal court of the vendor of a felony or any other criminal offense other than a traffic violation.

(7) A disclosure of the details of a bankruptcy, an insolvency, a reorganization, or any pending litigation of the vendor.

(8) If a vendor subcontracts part of the work to be performed, the vendor shall disclose all the information required by this chapter for the subcontractor as if the subcontractor were a vendor.

(9) Additional disclosures and information the commission determines appropriate for the procurement involved.

*As added by P.L.341-1989(ss), SEC.1.*

#### **IC 4-30-8-3**

##### **Contracts that do not comply with disclosure requirements; enforceability; construction**

Sec. 3. A contract for a major procurement with a vendor that does not comply with the disclosure requirements described in section 2 of this chapter may not be entered into and is not enforceable. A contract with a vendor who does not comply with the requirements for periodically updating the disclosures during the tenure of the contract as specified in the contract may be terminated by the commission. This section shall be construed broadly and liberally to achieve full disclosure of all information necessary to allow for a full and complete evaluation by the commission of the competence, integrity, background, and character of vendors for major procurement.

*As added by P.L.341-1989(ss), SEC.1.*

#### **IC 4-30-8-4**

##### **Vendor convicted of felony within preceding ten years; contract restrictions**

Sec. 4. A contract for a major procurement with a vendor may not be entered into if the vendor has been convicted of, or entered a plea of guilty or nolo contendere to, a felony committed in the preceding

ten (10) years, regardless of adjudication, unless the commission determines that:

- (1) the vendor has been pardoned or the vendor's civil rights have been restored;
- (2) subsequent to the conviction or entry of the plea the vendor has engaged in the kind of law abiding commerce and good citizenship that would reflect well upon the integrity of the lottery; or
- (3) if the vendor is a firm, an association, a partnership, a trust, a corporation, a limited liability company, or other entity, the vendor has terminated its relationship with the individual whose actions directly contributed to the vendor's conviction or entry of the plea.

*As added by P.L.341-1989(ss), SEC.1. Amended by P.L.8-1993, SEC.35.*

#### **IC 4-30-8-5**

##### **Bond or letter of credit**

Sec. 5. Each vendor in a major procurement must, at the time of executing the contract with the commission, post an appropriate bond or a letter of credit with the commission in an amount equal to the full amount estimated to be paid annually to the vendor under contract. However, the commission may, by a majority vote of all the members of the commission, adopt a resolution expressly permitting the director to decrease the bond or letter of credit requirement for a procurement, if the director determines that the decrease will result in a cost savings to the commission while still providing adequate protection against nonperformance. In lieu of a bond or letter of credit, a vendor may, to assure the faithful performance of its obligations, deposit and maintain with the commission securities that are interest bearing or accruing and that, with the exception of those specified in subdivision (1) or (2), are rated in one (1) of the four (4) highest classifications by an established nationally recognized investment rating service. Securities eligible under this section are limited to the following:

- (1) Certificates of deposit issued by solvent banks or savings associations organized and existing under Indiana law or under the laws of the United States and having their principal place of business in Indiana.
- (2) United States bonds and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest.
- (3) General obligation bonds and notes of any political subdivision of the state.
- (4) Corporate bonds of a corporation that is not an affiliate or subsidiary of the depositor.

Securities shall be held in trust and must have at all times a market value at least equal to the full amount estimated to be paid annually to the vendor under contract.

*As added by P.L.341-1989(ss), SEC.1.*

**IC 4-30-8-6****Liquidated damages**

Sec. 6. Each contract entered into by the commission for a major procurement under this chapter must contain a provision for payment of liquidated damages to the commission for a breach of the major procurement contract by the vendor.

*As added by P.L.341-1989(ss), SEC.1. Amended by P.L.32-1990, SEC.3.*

**IC 4-30-8-7****Warrantless searches; prohibition**

Sec. 7. A contract entered into by the commission under this chapter may not include a provision allowing for warrantless searches.

*As added by P.L.341-1989(ss), SEC.1.*

**IC 4-30-8-8****Qualified to do business in state; filing of tax returns; governing law**

Sec. 8. Each vendor must be qualified to do business in Indiana and shall file appropriate tax returns as provided by Indiana law. All contracts are governed by Indiana law.

*As added by P.L.341-1989(ss), SEC.1.*

**IC 4-30-8-9****Adoption of rules for procurement**

Sec. 9. IC 5-22 does not apply to procurement by the commission. The commission shall adopt rules under IC 4-22-2 for procurement. The rules shall be designed to aid the commission in evaluating competing proposals and selecting the proposal that provides the greatest long term benefit to Indiana with respect to the quality of the product or services, dependability and integrity of the vendor, dependability of the vendor's products or service, security, competence, timeliness, and maximization of gross revenues and net proceeds over the life of the contract.

*As added by P.L.341-1989(ss), SEC.1. Amended by P.L.49-1997, SEC.24.*